

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 17, 1999 at
3:10 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 469, SB 399, SB 433,
2/11/1999
Executive Action: SB 398, SB 323, SB 469, SB 388,
SB 353, SB 433

HEARING ON SB 469

Sponsor: SEN. MIGNON WATERMAN, SD 26, Helena

Proponents: Hank Hudson, Department of Public Health & Human Services

Jane Jelinski, Montana Association of Counties

Wendy Young, Working for Equality & Economic Liberation

Carson Strege, Montana People's Action

Rebecca Moog, Montana Women's Lobby

SEN. BOB DEPRATU, SD 40, Whitefish

Opponents: None

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, SD 26, Helena, said the bill allowed the Department of Public Health & Human Services (DPHHS) to purchase state motor pool cars from the Department of Administration. They would be bought at residual value and utilized by allowing Families Achieving Independence in Montana (FAIM) recipients to purchase the vehicles through local non-profit organizations. Participants in this program had to participate in the FAIM financial assistance program and Temporary Assistance to Needy Families (TANF) federal welfare funds for the purchase of the cars. She stated the recipients had to be currently employed, actively seeking to become employed or be employed within 30 days of receipt of the car. They also needed to continue employment throughout the life of the loan, and share in the cost and ownership of the vehicle by making payments or donations to the non-profit entity handling the program. They also needed to buy and maintain automobile insurance for the car.

She said she brought **SB 469** because she served on a local welfare advisory committee, and had talked with two FAIM employers regarding issues they faced when hiring FAIM employees. Both of them said transportation was a big issue, and something should be done to provide reliable, adequate transportation. **SEN. WATERMAN** reported other states had similar programs, where surplus vehicles from the state motor pool could be used. Advantages to this program were the cars were basic and had maintenance records, and there were already pilot programs in place. One program was in Glendive, where vehicles were donated, and the other was a national program, called Charity Cars, International. She commented the program in **SB 469** would also establish a credit record for participants.

Proponents' Testimony:

Hank Hudson, Department of Public Health & Human Services (DPHHS), said they supported the bill and would bear some of the

administrative responsibilities. He agreed transportation was one of the major barriers, and since there was very little public transportation, ownership of a car was the basic way to get to and from work. Many of their constituents did not own dependable cars, and **SB 469** addressed that issue.

Jane Jelinski, Montana Association of Counties (MACo), said they stood in support of the bill.

Wendy Young, Working for Equality & Economic Liberation (WEEL), said they agreed transportation was one of the biggest problems; therefore, they supported the bill.

Carson Strege, Montana People's Action (MPA), said they supported this important legislation.

Rebecca Moog, Montana Women's Lobby (MWL), said they also stood in support of the bill.

SEN. BOB DEPRATU, SD 40, Whitefish, said he was a businessman who owned an auto dealership. He commented the program in **SB 469** was very real and good, because they frequently ran into people who had this need and there was no way to finance them. Those people, then, usually ended up on the secondary markets and paid exorbitant interest rates or fees for not-so-reliable transportation. The result was a losing situation. He wanted to express his support for the bill, because it was a good way to get folks started.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 5.8}

Questions from Committee Members and Responses:

SEN. B.F. "CHRIS" CHRISTIAENS asked if full insurance coverage would be required. **Hank Hudson** said there were amendments which would specify the Department would not be the seller of the car. It would donate the car to non-profit corporations, which would enter into the buy-sell agreement, monitor it, repossess, if necessary, etc. The amendment said "at the discretion of the Department or local program, the buyer maintain comprehensive collision coverage".

SEN. CHRISTIAENS commented it seemed onerous if, for example, the person had been working for 13 months and making regular payments, but then lost his or her job. According to the bill,

the car would be repossessed. **Hank Hudson** said if he or she lost the job and re-entered the FAIM program, or were in the process of looking for another job, they would not foreclose on the car. The rules for foreclosure, beyond the basics, would be at the discretion of the local level.

SEN. DUANE GRIMES asked about the Fiscal Note. **SEN. MIGNON WATERMAN** said it was \$52,500 per year in Federal TANF funds. They anticipated that would finance about 50 cars per year, at \$3,500 per car.

SEN. GRIMES asked what was currently done with the cars, and was the \$3,500 the approximate amount. **SEN. WATERMAN** said it was the residual value, although they might sell for slightly more if they went through the auctions; however, they were not paying fees, etc.

SEN. BOB DEPRATU asked if there was a good mechanism in place to receive donated vehicles. **SEN. WATERMAN** said the Glendive program operated that way, and it was hoped as this program went on, local non-profits could figure out ways to expand this. Also, repayments would recycle so they could pay for repairs, or to fix up a donated car.

SEN. GRIMES asked how the supply would meet the demand. **SEN. WATERMAN** said if the demand exceeded the supply, there would be a request for expansion of authority from the Department of Transportation. However, that would depend on the availability of cars and Federal Funding.

SEN. AL BISHOP asked the definition of residual value. **SEN. DEPRATU** said the term normally applied to a lease vehicle; however, for accounting purposes, it was the value of the vehicle at the end of the cycle during which it was used. For example, the budget for a new highway patrol car might be \$17,000, but they would assume they would get \$5,000 for that vehicle at the end of its cycle.

{Tape : 1; Side : A; Approx. Time Counter : 10.1}

SEN. BISHOP asked if state property could be donated. **Hank Hudson** said it could, after the property was purchased.

SEN. DON HARGROVE asked if it would be first come, first served. **Hank Hudson** said since this was a new program, that was their idea. If this bill passed, they would make the local FAIM advisory council aware of this option, and they would need to put the entity together to receive and administer the program. He

stated they would have to identify the specific client whose barrier was transportation, and put in the request.

SEN. BISHOP asked if the Department would ever end up with the repossessed vehicle. **Hank Hudson** said he envisioned the cars would remain with the local entity, to be used again for this purpose.

SEN. DEPRATU asked if, when the folks made the payments, a mechanism would be in place which would establish credit by reporting to the credit bureau they were making payments. **Hank Hudson** said one of the goals of the program was to help them establish credit.

Closing by Sponsor:

SEN. MIGNON WATERMAN said the bill was the result of three Departments working together and the automobile dealers supported it, as well.

{Tape : 1; Side : A; Approx. Time Counter : 16}

HEARING ON SB 399

Sponsor: **SEN. REINY JABS, SD 3, Hardin**

Proponents: **David Westlake, Montana Health Information Management Association**
Barb Slunaker, St. Peter's Hospital
Judy Jackson, Shodair Hospital
Steve Browning, MHA...An Association of Health Care Providers
Christiana Schweitzer, Montana Trial Lawyers' Assn.

Opponents: **Alan Blakley, Attorney from Missoula**
Geoffrey Angel, Attorney & Private Citizen

Opening Statement by Sponsor:

SEN. REINY JABS, SD 3, Hardin, said **SB 399** provided a cap on the amount a health care provider could charge for copying health care information. He explained record departments of hospitals and health care facilities were often asked for copies of records of individuals served by a health care facility. Present statute said they could charge a reasonable fee, not to exceed the actual

cost, for providing the health care information. "Actual cost" was too vague, because it was not clear whether it was figured on time, materials, depreciation on the copy machines, etc. The reason for the bill was a lawsuit, filed in Federal court, against the Community Medical Center in Missoula, because the actual cost was not billed. He reported the lawsuit was still pending, and they were considering a class action suit. He said he had checked other states, and Montana was the only state which had "actual costs". Some had a reasonable fee, others had no fee at all and most had a set fee, which ranged from \$5.00 to \$32.50. He told the Committee the bill stated 50 cents per page, copying fee, and the reasonable fee was not to exceed \$15.00 for searching and handling.

Proponents' Testimony:

David Westlake, Montana Health Information Management Association (MHIMA), used **EXHIBIT(phs39a01)** and **EXHIBIT(phs39a02)** for his testimony.

Barb Slunaker, St. Peter's Hospital, said they supported the bill.

Judy Jackson, Shodair Hospital, said they also supported **SB 399**.

Steve Browning, MHA...An Association of Health Care Providers, said they supported the bill.

Christiana Schweitzer, Montana Trial Lawyers' Association (MTLA), said they stood in support of **SB 399**, explaining it was a wise decision to include language which would reasonably cap the costs. In the past, the charges for copying records had been unconscionable; however, they hoped "reasonable fees" would be equitably be applied to patients, insurers and attorneys. She wanted to point out, even with this language, it would be possible to charge \$15.50 for just one copy.

{Tape : 1; Side : A; Approx. Time Counter : 20.7}

Opponents' Testimony:

Alan F. Blakley, Attorney, Missoula, said he was the attorney in the above-mentioned lawsuit, and distributed copies of **EXHIBIT(phs39a03)**, from which he drew parts of his testimony. He explained the lawsuit was a result of numerous consumer complaints, because the law, as it now stood, was a reasonable law. He used **EXHIBIT(phs39a04)** as a summary for his testimony.

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Geoffrey Angel, Attorney & Private Citizen, said it did not seem the health care providers should be in the business of selling records, because they were not defraying the costs, as was the intent of the original legislation. However, it had become evident the medical providers charged in excess of that, i.e., it had become a "for-profit" business. He said, even though he had been in practice for a short time, all his clients were affected by this because they could not afford to pay for them and he, as an attorney, could not afford to buy them. The result was if an injury could not be established through medical records, there would be no payment. He said, as an example, he wrote to an association of doctors and received two packages of papers. One was six pages, at a cost of \$35.00, and the other was eight pages, at \$35.00. He said Livingston Memorial charged \$1.00 per page, and in one instance, he got 145 pages at a cost of \$120.00. He said allowing the medical providers to sell these records was a big problem on the personal level, because most of the clients could not pay for them. Because of this, they were not likely to pursue tort damages, assault or medical coverage which should be provided by an insurance company.

He said the first thing people asked when they came to see him, was how much it was going to cost. If medical records were involved, the cost was a serious problem. He opposed the bill because he thought it unjust to pay the profit gained by the records providers.

{Tape : 1; Side : B; Approx. Time Counter : 5.2}

Questions from Committee Members and Responses:

SEN. DON HARGROVE asked about the suggestion the patients already paid for their records when they bought the medical service.

David Westlake said the patient could have a free copy; however, the issue was, even in the case of going to court, the original record would go to court. The request for multiple copies of major records was where the issue of cost lay. He said patients were allowed to come to a facility to review the records with a doctor; however, the request for an after-the-fact process (many times, years later) took additional time. That also meant additional costs.

SEN. B.F. "CHRIS" CHRISTIAENS asked if he understood correctly every patient had a right to a free copy. **Mr. Westlake** clarified his earlier statement by saying every patient had a right to review his or her record. Most facilities, in the continuum of care, furnished the free records to the other area of care. He commented once the records left their hands, they could not certify their accuracy; therefore, they preferred to make a copy

to send directly to the doctor, rather than through the patient to the doctor.

SEN. CHRISTIAENS maintained his question had not been answered. **Mr. Westlake** answered he withdrew that wording, and stated they were authorized to review.

SEN. CHRISTIAENS still needed further clarification, and said he understood he could review his record, but he may be charged for a copy. **David Westlake** said that could be true, because many times it was determined by the reason for the copy.

SEN. CHRISTIAENS asked what the normal fee would be, if he requested a copy of his medical records. **Mr. Westlake** said it would be based on what the facility figured its reasonable costs. This bill would standardize the costs and put a cap on the costs.

SEN. CHRISTIAENS asked if there was a charge for records which were transferred to a physician or other health care facility. **Mr. Westlake** said he did not know of any facilities which charged for records for continuation of care.

SEN. CHRISTIAENS asked the cost of filing a claim in case of multiple insurance carriers. **David Westlake** said sometimes insurance companies made agreements with health care facilities for a blanket amount; however, they asked only for specific pages.

SEN. DOROTHY ECK asked if a hospital would rely on a private company to give a patient his or her records. **Mr. Westlake** said in many cases, the companies were in the facility, i.e., they owned the copy machines, provided the clerical staff, etc. The original records did not leave the facility.

{Tape : 1; Side : B; Approx. Time Counter : 12.6}

SEN. BOB DEPRATU asked if there was a standard as to how long hard copies of the medical records were kept. **David Westlake** said the length of time for keeping an original record was determined by the amount of storage space and possible use of that record before it went to an alternative form. Some kept the originals two or three years, while others might keep them indefinitely.

SEN. DEPRATU wondered if the originals were destroyed in two years, automatically microfiched or saved in some other way. **Mr. Westlake** said a core record, at least, would be maintained indefinitely. The law mandated there were certain time frames

during which a record had to be kept, before it could be totally destroyed.

SEN. DEPRATU asked if he would consider it unreasonable, if the basic fee and per-page fees were reduced from what the bill called for. **Mr. Westlake** said from his personal experience in 1994 and quality, legibility issues of copying medical records, he would probably not consider it reasonable.

SEN. JOHN BOHLINGER asked for further understanding of the measurement of actual costs. **David Westlake** went back to the 1994-1995 studies, and said the costs were based on the distance between the offices where the records were filed, how far up they were, how many had to be pulled, legal requests, etc. They did random studies and compiled the data.

SEN. BOHLINGER said he did not hear numbers. He asked how much it would cost to copy a six-page document. **David Westlake** said he did not have the numbers in front of him, and he was not willing to "just pull numbers out of his head." He suggested if the cost study was done today, it would reflect an increase; in fact, if the Committee wanted a study done, it would be possible to do so.

SEN. DALE BERRY asked if it would be possible to project the margin of profit, using the numbers in the bill. **Mr. Westlake** said there would not be a high margin of profit.

{Tape : 1; Side : B; Approx. Time Counter : 22}

SEN. SUE BARTLETT asked if there was a charge for every copy, regardless of destination, would there be a profit. **Mr. Westlake** said that would be hard to say.

SEN. BARTLETT asked him to base his answer on the facilities with which he was familiar. **Mr. Westlake** said they tried to set it up on a "break-even" cost, explaining they based their budget on how many pages might be copied, and how many staff members would be needed to make those copies. That was the basis for many of the study costs.

SEN. BARTLETT said since there was not a charge for all copies, was the "break-even" based on the percentage on which the charge was made, or was it for all copies made. **Mr. Westlake** said the amount charged did not cover the total costs for all patients; in fact, it covered only the portion for those copies which were charged to be sent out. The rest were budgeted in as a service.

SEN. AL BISHOP referred to the charges listed in the bill, and wondered if all agencies would immediately charge 50 cents per page and the \$15.00 administrative fee. **David Westlake** said he had already talked to some facilities, which said if the bill passed, they would maintain what they were currently charging, even if it was less than in the bill.

SEN. BISHOP asked how the fees should be set. **Alan Blakley** said the fee should be based on the patient having a right to one free copy for any purpose, and the recipient of the fees. If the fees went to the hospital, that was different from their going to the for-profit corporations, so they could make a profit from selling the records. He said he would look at the studies offered by **Mr. Westlake**, and check with all involved parties in order to determine what the maximum was, and he did not think it was 50 cents per page, plus \$15.00. He thought it reasonable for the charge to be one or the other.

{Tape : 2; Side : A; Approx. Time Counter : 0}

A photocopy machine did not cost 50 cents per page.

SEN. SUE BARTLETT asked if it was the intent to charge the \$15.00 fee for each request for recorded health care information. For example, if she asked for information regarding her appendectomy this week, and paid \$15.00 plus copying charges, would she have to pay the \$15.00 again if two weeks later, she needed records for her cryosurgery. **SEN. REINY JABS** said he thought the \$15.00 would be for each request. He said one of the opponents said one copy should be free; however, 95% of the people did not want the copy. This would result in those who really wanted to copy paying a higher price.

SEN. CHRISTIAENS commented future rulemaking would have problems if the language was not clear.

SEN. BARTLETT asked for whom **SEN. JABS** was carrying the bill, and was told it was the Hospital Association. **Steve Browning** said he assumed the \$15.00 fee would be charged for each request.

{Tape : 2; Side : A; Approx. Time Counter : 4.5}

Closing by Sponsor:

SEN. REINY JABS reiterated the charges listed in the bill were maximum only, i.e. the facilities had the flexibility to charge less, if they so desired. The set fees would stop the outrageous charges, and it was complicated to find actual costs. He said most hospitals in Montana did not have the for-profit companies

operating their copying service; in fact, when a request came in, usually the records person (hospital employee) would have to get up from his or her desk and make the copy. The records were not sold, but a fee was charged for the work involved. He also recounted when compared to other states, the \$15.00 maximum fee was reasonable, because it would be more simple to apply and would ward off future lawsuits.

HEARING ON SB 433

Sponsor: SEN. DOROTHY ECK, SD 15, Bozeman

Proponents: None

Opponents: Steve Pilcher, Montana Association of Realtors
Andy Skinner, Private Citizen
Jan Sensibaugh, Department of Environmental Quality
Stephanie Nelson, Health Officer, Gallatin County
Peter Nielson, Missoula Health Department
Joan Miles, Lewis & Clark City/County Health

Opening Statement by Sponsor:

SEN. DOROTHY ECK, SD 15, Bozeman, said the reason for the bill was a pre-legislative meeting with county officials, which reaffirmed the difficulties the county health departments had with the Department of Environmental Quality (DEQ). She said she had dealt with such issues since her early days in the Senate, and it appeared the problems were still continuing. The Department refused to look at the cumulative impacts, which were important if there were many subdivisions, and there was concern about the water quality of the ground water. There were also issues of communication, because local sanitarians wanted to know when the developer of a major subdivision was going out to inspect the site and do the necessary excavations.

She stated when the bill draft finally came, other things were included; however, when it was finally introduced, there were real problems. After the bill was introduced, which greatly incensed the health departments, the state finally petitioned DEQ to do rules so it would be clear what their responsibilities were in dealing with public health. The petition said since 1977, the Montana Sanitarians and Subdivisions Act required the Departments to adopt administrative rules requiring evidence that septic systems would comply with state and local laws and regulations, which were in effect at the time the preliminary or final plans were submitted. She said that had never been done. The petition also went on to say since 1994, they demanded the Department do

the same. She reported she had been at numerous meetings at which the Department admitted it was a serious problem and should be addressed; however, they said they did not have the staff to do so. **SEN. ECK** stated when she would ask if additional staff had been requested, she was always told it was not allowable to ask. She submitted that had been true, regardless of whose political administration it was.

She suggested the bill addressed the issue, especially in allowing competent local health departments to do major and minor subdivisions. That would address the problem of dual jurisdiction. She said she heard in one county, the local authority told the developer to have a minor problem when he turned his application in; otherwise, the Department would not approve it the first time around.

SEN. ECK discovered after the 10 counties petitioned the Department to start writing the rules, it agreed to withdraw the bill it had submitted and would start rewriting the rules, as dictated by the petition. She asked the Committee to listen to the testimony.

Proponents' Testimony: None.

{Tape : 2; Side : A; Approx. Time Counter : 18.5}

Opponents' Testimony:

Steve Pilcher, Montana Association of Realtors, read his written testimony **EXHIBIT** (phs39a05).

{Tape : 2; Side : A; Approx. Time Counter : 23.6}

Andy Skinner, Private Citizen, said he opposed the bill as it stood, even though the intent had merit and the people had worked very hard on it. However, he still wondered whose rules they were under, those of the state or the counties. He said they had been to the Supreme Court because the state told him the counties did not have the authority; in fact, all six judges agreed on the decision, but then reversed themselves and said the counties had the authority. He stated he was currently in the Supreme Court over rules adopted in 1995, by Lewis & Clark County, because the County rules said one thing, and the those of the state said something else. He opposed the rules, but they were proposed, drafted and passed anyway; in fact, after the rules were adopted,

they were changed. This type of problem had to be solved, once and for all, because there was no reason for counties and private developers to have these problems. They needed to know up front who was going to be the boss, i.e., there was no chain of command, and it needed to be established.

He said the bill had merit in that the state would have the command and delegate the authority; however, the bill said the decision of the Department could not overturn the decision of the local government on the issue reviewed by the local government. He suggested this was directly in conflict with two other laws on the books, which said there was a right to an appeal process. The appeal process had to be the same as that established by the state DEQ, which made sense.

{Tape : 2; Side : B; Approx. Time Counter : 0}

He referred to another section of law, and said the meaning was unclear; in fact, he suggested it could mean whatever anyone wanted it to mean. That was the kind of problem they were trying to stop, i.e., they wanted the law to say what it meant and clearly show it was protecting public health. He then referred to another section, and refuted it by saying he did not know anyone who could guarantee dependability of water. Another problem section was language which was based on a belief, not facts, or evidence.

Another problem was if, for example, there were a 100-unit subdivision, and one lot had a septic tank system pipe installed incorrectly, language in the bill said the whole subdivision would be revoked because of one lot. He submitted that did not make sense, i.e., the laws had to mean what they intended to do.

Jan Sensibaugh, Department of Environmental Quality (DEQ), read her written testimony **EXHIBIT** (phs39a06).

{Tape : 2; Side : B; Approx. Time Counter : 6.5}

Stephanie Nelson, Health Officer, Gallatin County, said her opposition to **SB 433** was bittersweet because Gallatin County was one of the 10 counties to petition DEQ to solve some of the issues through rulemaking. She stated they were committed to that, and they appreciated **SEN. ECK'S** bringing legislation after hearing their concerns at the legislative breakfast; in fact, some of those issues were solved in **SB 433**. However, they strongly felt it was better to go through the rulemaking process before going into the statutes. If they went through the statutes, it had to be done with the whole state in mind, instead of just a single county entity.

Peter Nielson, Missoula City/County Health Department, said they had the utmost respect for **SEN. ECK** and her long-standing devotion to public health; in fact, they never anticipated a time when they would oppose her legislation. He said they had repeatedly gone on record as opposing changes to the Sanitation and Subdivision Act, until such time legislative-required rulemaking was complete. Their department united with 10 other health departments throughout Montana in petitioning DEQ to complete rulemaking, which was required since 1977. As of February 12, DEQ granted the request to initiate the rulemaking procedure; therefore, his department preferred the rulemaking be allowed to proceed, and the state laws not be modified at this time. He reported their opposition to **SB 433** was its conflict with the request, and was, therefore, unnecessary. He commented the bill contained major revisions to state law, and was on short notice to the legislature; therefore, it was difficult to expect the Committee to give this careful review and solve a complex problem.

He apologized for leaving a letter from another opponent on his desk, but mentioned Jay Cameron, Ravalli County, who wanted to be on record as opposing the bill also.

He felt this was an attempt to clarify and improve the situation; however, in the long run, it could be more damaging to both local authorities and the process of subdivision review for developers. He asked the Committee to allow the rulemaking process to go forward and make an opportunity for local health departments and DEQ to reestablish relations, which had been damaged.

Joan Miles, Lewis & Clark City/County Health Department, said they also reluctantly opposed the bill. She stated they might not be able to address everything that was necessary through rulemaking; however, they had to go through the rulemaking process first. Then they could see what had and had not been fixed, which meant they could come with legislation. She stated the worst thing they could do was to piecemeal solutions, because they could result in litigation. They wanted the changes to be very clear and comprehensive. She referred to the lifting of sanitary restrictions; however, it could not be considered in an isolated manner, because one problem would be solved and others created. She distributed copies of **EXHIBIT (phs39a07)**, and said Joseph Russell wanted to be in the record as an opponent.

{Tape : 2; Side : B; Approx. Time Counter : 16}

Questions from Committee Members and Responses:

SEN. B.F. "CHRIS" CHRISTIAENS asked if he understood correctly this rulemaking procedure had been in process since 1977. **Peter Nielsen** said the requirement for the rules had been in statute since 1977; however, there had not been an effort to adopt those rules until now.

SEN. CHRISTIAENS said he was concerned in being expeditious in getting the process done, and explained a Committee bill had passed the legislature in 1995; however, those rules had not yet been adopted. He said he found that reprehensible and he would be watching what would happen in this process. It must be expedient, and by that he meant "within the year". **Jan Sensibaugh** said they agreed. The counties' petition for rulemaking included putting them on a schedule, in regard to responses, which would have timelines to meet. They made a commitment to get that done, hopefully by fall.

SEN. DON HARGROVE said the frustrations in this area were immense, and the rulemaking had to get done. He wondered if something in the bill could be amended in or out, which would force conclusion to the process. **Steve Pilcher** said the system was "broke", in the eyes of almost everyone associated with it. Personal feelings as to what was not working or what needed to be changed, differed; however, it was important to continue to discuss the problems and the common agreed-upon resolutions of that problem. The Department's effort was a good step in the right direction. He stated the reference to 1977 related to specific language in the Sanitation & Subdivision Act, which said the Department could approve only a system which met both state and local requirements. Until a few years ago, the Department had a policy that a statement of approval from the county health officer was necessary before the Department acted on the application. However, the Department had since decided that was not proper, which meant there was a dilemma and made rulemaking necessary. He agreed there was a major problem and **SEN. ECK** had made a good start on it; however, all facets needed to be considered so the whole system could work. This bill would not get them to the finish line, but there were parts to consider.

{Tape : 2; Side : B; Approx. Time Counter : 23.5}

Closing by Sponsor:

SEN. DOROTHY ECK said, after hearing the testimony, most would probably agree the best thing to do was to let the rulemaking process work. She realized there were both tweaking and major amendments which were needed. She hoped since the collaborative effort had begun and showed promise, it could be nurtured. A good bit of what needed to be done, could be done by rules;

however, one thing which could not be done through rule was extending authority to major subdivisions.

{Tape : 3; Side : A; Approx. Time Counter : 0}

She asked the Committee to table **SB 433** when it took executive action, because she intended to introduce a study resolution which would ask Environmental Quality Control (EQC) to have oversight over the rulemaking and recommend what still needed to be done. It was her opinion people recognized if the process got underway, a working system might be developed.

EXECUTIVE ACTION ON SB 398

Motion/Vote: SEN. FRANKLIN moved that SB 398 DO PASS. Motion carried unanimously, 9-0.

EXECUTIVE ACTION ON SB 323

Motion: SEN. BOHLINGER moved that SB 323 DO PASS.

Discussion:

SEN. FRED THOMAS suggested amending the threshold to two-thirds of the Trust Fund, because three-fourths was almost impossible to achieve.

SEN. B.F. "CHRIS" CHRISTIAENS spoke against that suggestion because he had a bill draft which would have done something similar and would have required a three-fourths vote. He said several people had been working on this idea for about two years and he hoped it could be handled in legislation before the settlement. He said he continually saw attempts to raid the Coal Trust Fund, and it would have been gone if a two-thirds vote had been required; therefore, he liked the three-fourths vote.

SEN. EVE FRANKLIN agreed, because the money came because of people's illness. The money should remain in trust and require a three-fourths vote.

Motion: SEN. THOMAS moved to STRIKE "THREE-FOURTHS" AND INSERT "TWO-THIRDS" DO PASS.

Discussion:

SEN. THOMAS said the principal in the Coal Trust Fund was not being kept up-to-date, because all the interest was being spent. That meant the principal was not kept intact, because the interest was not being spent after inflation. It was impossible to do something with it because a small minority of the legislature was in control, even though the vast majority might vote the other way. He again expressed support for a lower threshold.

SEN. DUANE GRIMES said he would support the motion because when the reason for the Health Care Trust was considered, one would have to admit the future was extremely uncertain. Future occurrences could require dipping into the Health Care Trust Fund, in order to prevent a calamity, such as an aging population. He felt two-thirds was a bit more reasonable, but it would still provide a high level of protection for the integrity for the trust. Future legislators should be given the maximum flexibility to use it.

SEN. BOB DEPRATU said he was bothered by the fact all the interest in the trust funds was being used, because he felt the trust funds should be increasing, and inflation allowed for. He thought this would be the ideal place to start the procedure.

{Tape : 3; Side : A; Approx. Time Counter : 7}

SEN. DOROTHY ECK said she liked the idea of three-fourths as a Constitutional level for a trust. She agreed it was very hard, but not impossible, to break. She commented a three-fourths majority was not that hard to get; in fact, many bills passed with more than a three-fourths vote. It did mean, however, there had to be strong agreement, and it could not be a political issue.

SEN. AL BISHOP said when he first came in 1987, there were many small trust funds. He voted to get rid of every one of them, because if they were not gone, the real problems, such as spending or taxation, would never be addressed.

SEN. CHRISTIAENS said he liked the comments by **SEN. DEPRATU** and wished he had said them before the motion was made. He suggested a withdrawal of the motion, in order to allow for more discussion on the idea.

SEN. EVE FRANKLIN suggested taking a vote, but keeping the bill in Committee.

Vote: Motion carried 6-5 on Roll Call Vote #1.

SEN. DUANE GRIMES referred to the vote of the people, and said they would wonder why it was not less than 50%. He thought it should be higher, perhaps 75%.

SEN. CHRISTIAENS said he liked **SEN. GRIMES'** comments because he had never been in favor of trust money going to the General Fund. He admitted there were many competing interests for this money, and 75% sounded good to him.

SEN. ECK said she supported the 75% also, because it would not be long before the interest itself would support the Children's Health Insurance Program (CHIPS), and other health care issues.

Motion/Vote: **SEN. GRIMES** moved to **CHANGE THE FIGURE TO 75% DO PASS. Motion failed 2-9, on Roll Call Vote #2.**

SEN. SUE BARTLETT commented the only funds the Board of Investments was authorized to invest in equities, were the Public Retirement System assets. She wondered how the Committee members would view the addition of a provision that trust fund assets could be up to a certain level, in private corporate capital funds.

SEN. ECK said those kinds of things had been on the ballot in the past, and people did not want them getting into the stock market.

SEN. BOB DEPRATU suggested a conceptual amendment, the language of which would be inserted on page 1, line 16. It would indicate the interest could be appropriated for state programs, after the adjustments for the current year's CPI. That amount would have to be used to help increase the trust. In other words, before interest income was appropriated, it had to be adjusted for the inflation.

{Tape : 3; Side : A; Approx. Time Counter : 19.3}

Motion/Vote: **SEN. DEPRATU** moved that **CONCEPTUAL AMENDMENT DO PASS. Motion carried unanimously, 11-0.**

SEN. HARGROVE said he would oppose the bill because he felt it would be advantageous to wait before acting on it. There was a lot to be learned by thinking about it, seeing what would happen, what strings were attached, etc.

Motion/Vote: **SEN. THOMAS** moved that **SB 323 DO PASS AS AMENDED. Motion carried 9-2, with SEN. GRIMES AND SEN. HARGROVE VOTING NO.**

EXECUTIVE ACTION ON SB 469

Motion: SEN. THOMAS moved that SB 469 DO PASS.

Motion/Vote: SEN. THOMAS moved that AMENDMENTS SB046902.ASF
EXHIBIT(phs39a08) DO PASS. Motion carried unanimously, 11-0.

Motion: SEN. THOMAS moved that SB 469 DO PASS AS AMENDED.

Discussion:

SEN. CHRISTIAENS wanted to be sure the repossession issue was taken care of through rulemaking. **SEN. DEPRATU** said Hank Hudson gave his word.

SEN. GRIMES suggested the Committee ensure their intention was the vehicles be used, on a prioritized basis, only for those who were most at need. He said the criteria had been first-come, first-served; however, that might not address the most needy. **Hank Hudson** said they would need some indication that rule-writing was in order, and any direction would be helpful.

SEN. GRIMES commented he felt the Department had sufficient idea about the intent. This was a program, which in the future, could evolve into other groups getting cars, i.e., he did not want to establish a precedent.

SEN. DEPRATU suggested before the next legislative session, the Department report on the success of the program.

SEN. CHRISTIAENS commented he thought there were donors, such as car dealers with trade-ins, who would be willing to donate vehicles with lots of good service remaining, if they would not have to guarantee their warranty.

SEN. HARGROVE suggested the Department work through the Oversight Committee on Children & Families for publishing the report and getting the word out.

Vote: Motion carried unanimously, 11-0.

VICE-CHAIRMAN FRED THOMAS assumed the chair because **CHAIRMAN AL BISHOP** had to leave.

{Tape : 3; Side : B; Approx. Time Counter : 0}

EXECUTIVE ACTION ON SB 388

Motion: SEN. CHRISTIAENS moved that SB 388 DO PASS.

Motion/Vote: SEN. CHRISTIAENS moved that AMENDMENTS SB038801.ASF EXHIBIT (phs39a09) DO PASS. Motion carried unanimously, 10-0.

Motion/Vote: SEN. CHRISTIAENS moved that SB 388 DO PASS AS AMENDED. Motion carried 9-1, with SEN. GRIMES voting NO.

EXECUTIVE ACTION ON SB 353

Motion: SEN. CHRISTIAENS moved that SB 353 DO PASS.

Hank Hudson explained the amendments in EXHIBIT (phs39a10), and said the language in capital letters was added, in order to address the concerns.

Motion: SEN. FRANKLIN moved that AMENDMENTS IN (EXHIBIT 10) DO PASS.

Discussion:

SEN. EVE FRANKLIN said the additional case management services would be provided by the Department. Also, in the amendment, "AVAIL THEMSELVES TO", the "TO" should be changed to "OF".

Vote: Motion carried unanimously, 10-0.

Motion/Vote: SEN. CHRISTIAENS moved to change "results", on line 4, to "progress". Motion carried unanimously, 10-0.

Motion: SEN. FRANKLIN moved that SB 353 DO PASS AS AMENDED.

{Tape : 3; Side : B; Approx. Time Counter : 10.9}

Discussion:

SEN. DUANE GRIMES asked if there currently was as much of a need for sanctions as there was three or four years ago. Hank Hudson said his personal impression was with the changes which occurred since the program began, sanctions were more problematic and an effort which needed to be considered more carefully. The changes in the bill would not weaken the effect of sanctions.

Vote: Motion carried unanimously, 10-0.

VICE CHAIRMAN FRED THOMAS relinquished the chair to **CHAIRMAN AL BISHOP**, who returned.

EXECUTIVE ACTION ON SB 433

Motion/Vote: SEN. ECK moved that SB 433 BE TABLED. Motion carried 10-1, with SEN. GRIMES voting NO.

ADJOURNMENT

Adjournment: 6:15 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

JANICE SOFT, Transcriber

AB/MM

EXHIBIT (phs39aad)